

REMARKS

In response to the outstanding Office Action dated August 29, 2003, Applicants have amended claims 1 and 18. Claim 1 has been amended to achieve consistency between the specification, the claim and the drawings. No new matter has been added. Claim 18 has been amended to correct its dependence.

An affidavit under 37 CFR 1.131 is supplied to show that subject matter disclosed and claimed in the present application was conceived and reduced to practice on or before the effective date of the reference upon which a 35 USC § 102(e) rejection has been made. The affidavit also establishes that the rejection is not based on a U. S. patent application publication "to another" because Peter Gebrian is an inventor of the present application and of the application publication. Additional attachments are included in support of such affidavit.

Objection to the Specification

The specification is objected to for failure to provide proper antecedent basis for the claimed subject matter. In response, claim 1 has been amended to reflect that the broth container has a generally octagonal cross section, consistent with the Specification on page 33, line 24.

Objection to the Drawings

The drawings are objected to for failure to show the “generally hexagonal cross section” of the broth container of previous claim 1. In response, claim 1 has been amended to reflect that the broth container has a generally octagonal cross section, consistent with originally filed Figure 11D. A copy of originally filed Figure 11D with the octagonal cross section marked in red accompanies this Response for the Examiner’s convenience.

Claim Rejections – 35 USC §112, second paragraph

Claims 1-12 and 18 are rejected under 35 USC §112, second paragraph, as being indefinite for failure to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claim 1 has been amended to reflect that the broth container has a generally octagonal cross section, consistent with originally filed Figure 11D and the specification on page 33, line 24, and also consistent with the recitation in claim 1 that the body is formed of four pairs of opposed walls.

Claim Rejections – 35 USC § 102

Claims 1-12 and 16-18 are rejected under 35 USC §102, as being anticipated by Gebrian et al (US 2002/0155590), which discloses a broth container and a broth canister. The applied reference has a common inventor with the instant application. An affidavit under 37 CFR 1.131 by the common inventor is attached to show that subject matter disclosed and claimed in the instant application was conceived and reduced to practice on or before the effective date of US 2002/0155590. Consequently, paragraph (e) of 35 USC § 102 cannot be applied to the instant application because the present invention was not described in an application for patent and published before the instant invention was constructively reduced to practice by the filing of an application [37 CFR 1.131(b) and MPEP 715.07]. It is thus believed that the rejection under paragraph (e) of 35 USC § 102 is improper and it is respectfully requested that the rejection be withdrawn.

In support of showing that the matter disclosed and claimed in the present application was conceived and constructively reduced to practice on or before the effective date of US 2002/0155590, copies of the following are attached:

Appendix A: A copy of the earlier filed U. S. Ser. No. 09/841,379 filed on April 24, 2001, now abandoned, in which the subject matter of the instant patent application identified

above (09/924,383) is disclosed and claimed in claims 1-11, may be seen in Figs. 11A-D and 12A-B and is described on page 33, line 21 bridging to page 34, line 24.

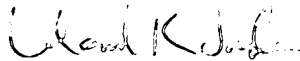
Appendix B: A copy of the Declaration and Power of Attorney for “REAGENT CONTAINER AND CANISTER FOR USE IN AN AUTOMATED MICROBIOLOGICAL ANALYZER” (which became U. S. Ser. No. 09/841,379 filed on April 24, 2001), in which Peter Gebrian is identified as an inventor of the subject matter of the present patent application.

Appendix C: A copy of the Filing Receipt U. S. Ser. No. 09/841,379 confirming it to have been filed on April 24, 2001.

Conclusion

Applicant believes that this application contains patentable subject matter and that the foregoing amendments and explanation provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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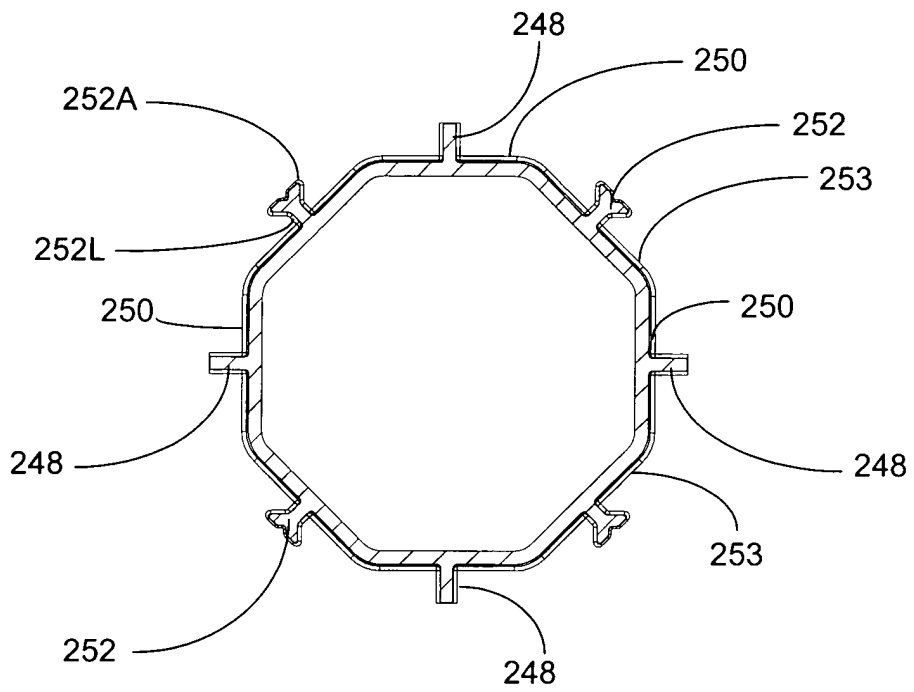


FIG. 11D